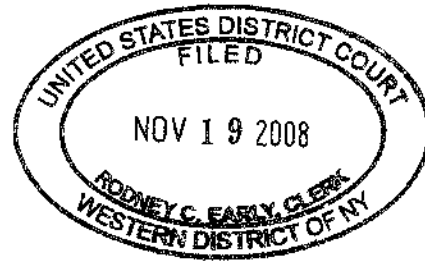


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



-PS-

SARGENT PALMER, 08-B-2530,

Petitioner,

-v-

08-CV-6448P

LAKEVIEW SHOCK, I.C.F.,

ORDER

Respondent .

In response to the Court's Order directing him to respond and address the question of exhaustion, petitioner has requested to withdraw his petition because he is now pursuing remedies in state court.

Accordingly, the action is dismissed without prejudice as withdrawn. Petitioner is reminded again that the applicable statute of limitations is tolled only "during the time in which a properly filed application for State post-conviction or other collateral review ... is pending." 28 U.S.C. § 2244(d)(2).

SO ORDERED.

s/Michael A. Telesca
MICHAEL A. TELESKA
United States District Judge

Dated: November 17, 2008
Rochester, New York